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In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 13.11.2006.

Bachna @ Gurbachan Singh .... Appellant.

vs

Gulzari and another .....Respondents.

Coram Hon'ble Ms. Justice Kiran Anand Lall.

Present: Mr.Munish Singal,Advocate,for the appellant.

Kiran Anand Lall, J.

This is a regular second appeal filed by the plaintiff (appellant), who has been non-suited by the courts below. He had filed a suit for declaration to the effect that he is owner in possession of the suit property, on the basis of an unregistered will dated 24.1.1992, executed by his mother, Gurnam Kaur (deceased), in a meeting of the Gram Panchayat, Village Buhian Wala, Tehsil Zira, District Ferozepur, in his favour, in lieu of the services rendered by him. Consequential relief of permanent injunction, restraining the defendants (respondents) who are the natural successors-in-interest of Gurnam Kaur, from alienating the suit property, was also claimed. In the alternative, it was pleaded that if the plaintiff was not `found' in possession, the relief of joint possession of the property, be also granted.

The respondents contested the suit, denying the execution as well as validity of the will. They also added that when mutation regarding the inheritance of Gurnam Kaur was sanctioned in favour of all of them on the basis of natural succession, no such will was produced by the appellant.

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During the pendency of suit, the appellant took up an additional plea also, stating that the matter had been compromised between the parties on 20.5.1995 – a fact which was stoutly denied by the respondents.

Trial was held in respect of the following issues:-

1. Whether Gurnam Kaur deceased executed an unregistered will dt.24.1.92 in favour of the plaintiff? OPP
2. Whether the mutation No.1879 sanctioned by the revenue department is void, null and not binding upon the rights of the plaintiff? OPP
3. Whether the plaintiff is entitled to the decree for declaration as prayed for?
4. Whether the plaintiff has no locus standi to file the present suit? OPD
5. Whether the suit in the present form is not maintainable? OPD
6. Whether the plaintiff is estopped to file this suit by his act and conduct? OPD
7. Whether the description of the property is not correct? OPD
8. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD
9. If issue No.1 is proved, whether alleged will dated 24.1.1992 is fabricated and is the result of mis-representation and fraud? OPD
10. Relief.

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Additional Issues:-

1. Whether compromise took place between the parties on 20.5.1995, if so, its effect? OPP.
2. If additional issue No.1 is proved, whether the compromise is result of fraud misrepresentation? OPD

After recording evidence, the trial court dismissed the suit, after recording a firm finding of fact about the will being not genuine, and also holding that the matter was never compromised on 20.5.1995, as pleaded by the appellant.

The verdict of trial court was upheld, in entirety, by the first appellate court, after taking into consideration, mainly, the following suspicious circumstances which shrouded the will:-

1. Non production of Will at the time of sanctioning of the mutation, in favour of the parties to the suit.
2. The production of will, for the first time, at the time of filing of this suit.
3. Execution of Will by Gurnam Kaur, at Village Buhian Wala, Distt. Ferozepur, Tehsil Zira, where she never resided.
4. Non entering of the Will, in the proceedings of the Gram Panchayat.
5. Death of Gurnam Kaur at Village Chak Chela, in the house of respondent No.1.
6. Admission of appellant that Gurnam Kaur was

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insane and was not maintaining good health 4/5 months prior to her death.

7. The fact that Gurnam Kaur had been residing with Gulzari Lal respondent, for the last two months preceding her death.

None of the above suspicious circumstances could be explained by the learned counsel for the appellant, before the court below or even before this court. The first appellate court was also right in taking note of the fact that there was no reference in the will, to the two respondents, who were also natural heirs of the deceased. Besides, in para no.13 of the judgment, the first appellate court observed that, as per appellant's own admission (in cross-examination), his mother, Gurnam Kaur, had become insane, 4-5 months prior to her death. So, once that was so, the will purporting to have been executed by her on 24.1.1992, i.e. Just 17 days prior to her death which took place on 10.2.1992, was, even otherwise, liable to be discarded, on this short ground.

No substantial question of law arises in this appeal for determination. The same, therefore, merits dismissal in limine, and it is so ordered.

13.11.2006. (Kiran Anand Lall)
vs. Judge.